

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

74-195¹¹³3

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

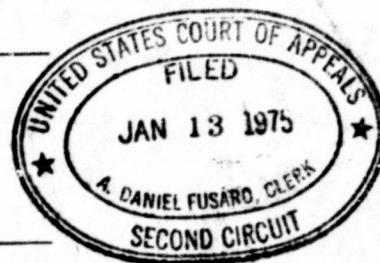
Docket No. 74-8235

CURTIS BERRY,

Appellant.

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74-1953

BRIEF FOR APPELLANT
PURSUANT TO
ANDERS v. CALIFORNIA



ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, :
Appellee, :
-against- :
CURTIS BERRY, : Docket No. 74-8235
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ANDERS V. CALIFORNIA

ON APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
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QUESTION PRESENTED

Whether there are any non-frivolous issues to present on appeal.

STATEMENT PURSUANT TO RULE 28(3)

Preliminary Statement

This appeal is from a judgment of the United States District Court for the Southern District of New York (The Honorable Milton Pollack) entered on May 8, 1974, convicting Appellant, after a trial before a jury, of conspiracy to violate the federal narcotics laws, 21 U.S.C. §846, and of four counts of distributing heroin, 21 U.S.C. §§812, 841(a)(1) and 841(b)(1)(A). On June 20, 1974, defendant was sentenced on each count to a term of imprisonment of eighteen months followed by a special parole term of three years, the sentences on each count to run concurrently. The defendant is presently serving that sentence.

Statement of Facts

Appellant was charged in a 5 count indictment together with one HARRY JENKINS with conspiracy to distribute and possess narcotic drugs. At trial, the Government presented testimony showing that in August and September 1973 the Appellant and Harry Jenkins, the co-defendant, who at the time of trial, was and still is a fugitive from justice, delivered a large quantity of heroin to a special agent of the Drug Enforcement Administration, acting in an undercover capacity.

The Appellant had acted as the chauffeur for Jenkins on the occasion of the various deliveries of the drug. He had also driven the car on the occasion when Jenkins assaulted one Jose Escudero, who was one of the Government's principal witnesses in this case.

Appellant testified in his own behalf to the effect that he was an unwitting tool of Jenkins with no knowledge of what was going on.

The jury, however, found him guilty. The Court, after the trial, denied a motion for bail pending appeal on the ground, among others, that Appellant was raising only frivolous issues on appeal.

Statement of Possible Legal Issues

The only possible appellate issues presented by the record in this case are the same as those set forth in the motion made in behalf of Appellant to set aside the verdict and for a new trial. That motion was denied. The issues raised may be summarized as follows:

I

The evidence was insufficient to find that Appellant aided and abetted the distribution of narcotics as charged in the indictment.

II

The admission of testimony concerning the assault on JOSE ESCUDERO was improper and prejudicial.

Both of these points were considered and rejected by the Trial Court. There is nothing in the record or in the case law to indicate that the ruling was not proper.

CONCLUSION

For the foregoing reasons there are no non-frivolous issues to be presented on appeal, and the motion for an order permitting counsel to withdraw should be granted.

Respectfully submitted,

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